

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.: 10/802,315
Confirmation No.: 4928
Filing Date: 03/17/2004
Applicants: Voit et al.
Art Unit: 2125
Examiner: Shechtman, Sean P.
Title: METHOD AND DEVICE FOR OBTAINING ORTHOSIS MODEL

PETITION PURSUANT TO 37 C.F.R. § 1.113
OVER OBJECTIONS TO DRAWINGS

Dear Sir:

The Applicants, by and through their attorneys, respectfully petitions the Office from objections to drawings asserted in the Office Action dated March 6, 2006. The objections to the drawings are not appealable to the Board of Patent Appeals and Interferences, as set forth in M.P.E.P. 706.01. Pursuant to M.P.E.P. 1002, it is submitted that the two month time period for filing this petition commenced on the date of mailing of the Advisory Action, June 20, and that this Petition is therefore timely. Specifically, the objections were first made in the Office Action dated March 6, 2006, and reconsideration was requested in writing in an after-final amendment submitted June 5, 2006. The after-final amendment was denied entry on June 20, 2006.

Payment of the requisite fee of \$130.00 pursuant to 37 C.F.R. § 1.17(h) is being authorized through EFS-Web. If additional fees are incurred because of this Petition and not included, the Commissioner is authorized to charge said additional fees, as well as credit any overpayments, to Deposit Account No. 04-1061 of Dickinson Wright, PLLC.

STATEMENT OF FACTS

In the Office Action dated March 6, 2006, the drawings were objected to for not showing (1) data input for inputting patient data corresponding to a curvature of the patient's spine corresponding to factors independent of the curvature of the spine; (2) selecting a plurality of orthosis models; and (3) determining a curvature type on the basis of the patient's data. On June 6, 2006, applicants submitted an after-final amendment setting forth deficiencies in the objections and

requesting withdrawal. The same deficiencies noted in the after-final amendment are set forth below for the Director's consideration. The Examiner advised the Applicants of his refusal to consider the remarks and proposed drawing correction by Advisory Action dated June 20, 2006.

POINTS TO BE REVIEWED

1. The first objection to the drawings is improper because the claims don't recite data input for inputting patient data corresponding to a curvature of the patient's spine corresponding to factors independent of the curvature of the spine.

The first objection to the drawings is improper because the claims do not recite the phrase cited by the Examiner. Specifically, none of the claims recite: data input for inputting patient data corresponding to a curvature of the patient's spine corresponding to factors independent of the curvature of the spine.

Language that is similar, but not identical, to the phrase set forth by the Examiner's is recited in claims 15 and 18; however, the features recited in claims 15 and 18 are shown in the drawings. Claim 15 recites "**a data input device for inputting** a patient's data corresponding to a curvature of the patient's spine" and claim 18 recites "**a device for obtaining** the patient's data corresponding to factors independent of the curvature of the spine." Exemplary data input devices are shown at 104 in Figure 4, at 6 in Figure 5, and in Figure 6. An exemplary device for obtaining the patient's data corresponding to factors independent of the curvature of the spine is shown at 4 in Figure 5.

2. The second objection to the drawings for not showing selecting a plurality of orthosis models is improper because the objection was not asserted in the first office action.

M.P.E.P. 707.07(a) sets forth that any formal requirements which the examiner desires to make should be included in the first action. This principle is reinforced by being restated at M.P.E.P. 608.02(b). M.P.E.P. § 706.02(j) is also relevant to the present matter, stating that it is important for an examiner to properly communicate issues early so that the applicant can be given fair opportunity to reply.

Original claim 17 recited selecting at least two orthosis models (a plurality of orthosis models) and the drawings were not objected to. The applicants made a fully responsive reply to the first office action and would have addressed this objection if it had been presented at that time.

3. The objection to the drawings for not showing determining a curvature type on the basis of the patient's data is improper because this feature is shown in the drawings.

The third objection to the drawings is improper because the step of determining a curvature type is shown at 106 in Figure 4, at 8 in Figure 5, and in Figure 6.

ACTION REQUESTED

It is requested that the Examiner be directed to withdraw the first objection for not showing data input for inputting patient data corresponding to a curvature of the patient's spine corresponding to factors independent of the curvature of the spine since the claims don't recite this feature.

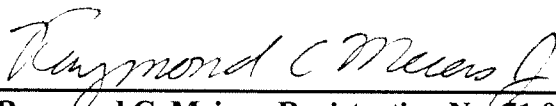
It is requested that the Examiner be directed to withdraw the second objection for not showing selecting a plurality of orthosis models since this objection was not made in the first office action. Alternatively, it is requested that the Examiner be directed to issue a new, non-final office action if the objection is to be maintained so that the applicants may be given a fair opportunity to reply.

It is requested that the Examiner be directed to withdraw the third objection since the drawings do show determining a curvature type on the basis of the patient's data.

Respectfully submitted,

DICKINSON WRIGHT PLLC

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